IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

REVIEW PETITION NO.8 of 2006

In

Second Appeal No.24 of 2003

Sou. Jayashri Jayasingrao Zite ..Petitioner

(Orig. Appellant)

V/s

Smt.Parvatibai Piraji Mane and Ors. ..Respondents

Shri V.B.Naik for Petitioner

P.V. Bodadare for Respondent nos.1 to 6

CORAM:S.R.SATHE,J.

DATED:15th June 2006

P.C.:-

1. Heard both sides.

2. It is very clear from the record that the point that is being agitated now by the applicant in this petition was in fact raised by him even during the course of the argument and the same has been specifically dealt with while passing the order dated 22/06/2005 . It is true that the application for appointment of Commissioner was made by the applicant in the trial Court but subsequently it was not pressed. Thereafter an attempt was also made to get the Commissioner appointed and give additional evidence in the first appellate court. However, for the reasons mentioned in the order passed by the first appellate court the application was rightly

rejected. Admittedly, the present applicant has not challenged the said order in the higher court. It is only when now the second appeal has been dismissed the applicant has filed the present application for review. He has also placed reliance on a case **Kashinath Chindhuji Shastri V/s Haribhau Nathuji Bawanthade reported in 2004(2) Mh.L.J.** However, from the perusal of the ruling, it is very clear that this ruling does not support the case of the applicant. It is true that when there is issue with regard to encroachment of the land, the land be measured through DILR or it is necessary to get the Commissioner appointed.

3. Having regard to the peculiar facts of the present case the first appellate court did not appoint the Commissioner. The said order is well reasoned order.

4. Admittedly, while passing order dated 22/06/2005 the correcet position with regard to an application for appoitment of Commissioner filed in the First Appellate Court was not brought to the notice of this Court. Even though such application was in fact filed the same has been rightly rejected by the said Court. That order was also not challenged in higher Court. That fact does not change the fate of the appeal. Hence, there is no need to review the order dated 22/06/2005.

5. Hence application is rejected.

(S.R.SATHE,J.)